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ROBERTS ABOKHAIR & MARDULA, LLC  
SUITE 1000  
11800 SUNRISE VALLEY DRIVE  
RESTON VA 20191-5302

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MAY 09 2003

OFFICE OF PETITIONS

In re Application of  
Karl Rogers et al.  
Application No. 09/816,306  
Filed: March 23, 2001  
Attorney Docket No. 2585-009

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: DECISION REFUSING STATUS  
: UNDER 37 CFR 1.47(b)  
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This is in response to the petition filed January 13, 2003, under 37 CFR 1.47(b), in response to the Notice to File Missing Parts mailed July 17, 2002.

The petition under 37 CFR 1.47 (b) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed March 23, 2001. An unexecuted declaration and power of attorney naming Karl Rogers and Timothy Evard as the inventors was presented upon filing. Accordingly, on July 17, 2002, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and surcharge for its late filing.<sup>1</sup> In reply, the instant petition and request for a four month extension of time was filed.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration; (2) an acceptable oath or declaration; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) proof of irreparable damage.

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<sup>1</sup>A Notice to File Missing Parts of Nonprovisional Application was mailed in error on May 3, 2001. A withdrawal of that Notice was mailed July 17, 2002.

The petition lacks item(6). The Rule 47 applicant fails to provide proof of irreparable damage (see MPEP 409.03(g)). A statement by Rule 47 applicant that the filing is necessary to preserve the rights of the parties would be sufficient.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                    Mail Stop Petitions  
                                 Commissioner for Patents  
                                 P.O. Box 1450  
                                 Alexandria VA 22313-1450

By FAX:                    (703) 308-6916  
                                 Attn: Office of Petitions

By hand:                    Crystal Plaza Four, Suite 3C23  
                                 2201 S. Clark Place  
                                 Arlington, VA 22202

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.

A handwritten signature in cursive script, reading "Patricia Faison-Ball". The signature is written in black ink and is positioned above the printed name and title.

Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions